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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of Implementation of Section)
621(a)(1) of the Cable Communications Policy)
Act of 1984, as amended by the Cable Television)
Protection and Competition Act of 1992)

MB Docket No. 05-311

**COMMENTS OF
THE COUNTY OF DARLINGTON
DARLINGTON, SOUTH CAROLINA**

These Comments are filed by the County of Darlington in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, the County of Darlington believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

In our community, a cable "franchise" is termed a franchise. The Federal Cable Act refers to this as a "franchise" so we will use that term in these comments. Also, many communities have a cable ordinance which operates in conjunction with the franchise agreement, the terms of which are often negotiated with the cable company in conjunction with the franchise agreement. These documents collectively referred to as the "franchise" below.

Cable Franchising in Our Community

Community Information

The County of Darlington is a county with a population of 67,394. Our franchised cable providers are Time Warner Cable (formerly Vision Cable of South Carolina) and Adelphia Cable (formerly Century Cable). Our community has negotiated cable franchises since 1978.

Our Current Franchise

Our current franchise with Time Warner Cable began on August 8, 2003 and expires on August 4, 2018. Our current franchise with Adelphia Cable began on April 7, 1997 and expires on June 2, 2010. We are not currently negotiating a franchise renewal with the incumbent providers.

Our franchise requires the cable operators to pay a franchise fee to the county in the amount of 5% of the cable operator's gross annual revenues from all sources received from or in connection with the system, including advertising revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

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We require the cable operators to provide governmental access channels on the cable system. Each cable operator currently has one government access channel for use by the County under a shared and equitable arrangement with divisions of government with whom the franchisee holds a franchise in Darlington and Florence Counties.

Our franchise requires our cable operators to provide one free Basic Service outlet to county buildings, fire houses, police stations, and public schools (K-12) located within 200 feet from the activated plant of the cable system and capable of being served by a standard aerial installation.

Our franchises contain the following customer service obligations, by which we are able to help ensure that the cable operators are treating our residents in accordance with federal standards and the terms they agreed to in their franchise. The cable providers must abide by rules and regulations of the Federal Communications Commission; operate on a full time basis, less normal maintenance time and conditions under which the franchisee has no control; adopt procedures for the investigation and resolution of all complaints regarding the quality of service, equipment malfunctions, and similar matters in compliance with FCC customer service regulations; keep and maintain proper and adequate inventory of maintenance and repair parts for the cable television systems; have maintenance and repair crews available in accordance with good engineering practices; make reasonable efforts to respond to service complaints in compliance with FCC customer service rules; maintain a local office and a toll free telephone number accessible by subscribers; and provide a schedule of rates and installation charges to all subscribers.

Our franchise contained the following reasonable build schedule for the cable operator: to extend their facilities to any new areas having at least 40 homes per mile (30 homes per mile in the most recent agreement) contiguous to an existing truck cable. The franchisee will consider extending cable service to areas with lesser density contingent upon economic and technical feasibility.

Our franchise contains a "Level Playing Field" provision which states the following: The County agrees that any grant of additional franchises by the County to any other entity to provide the services similar to those provided by the franchisee shall cover the entire territorial area of the county and shall not be on terms and conditions (including, with limitations, the franchise fee) more favorable or less burdensome to the grantee of any such additional franchise than those which are set forth. The County agrees that no franchise shall be granted on more favorable or less burdensome terms and conditions than those imposed upon the Franchisee.

Our franchise contains the following insurance and bonding requirements: The Franchisee shall, at all times, maintain in force, at its own expense, a general comprehensive liability insurance policy with an insurance company authorized to do business in the State of South Carolina, protecting the county against liability for loss or damage for personal injury, death, and property damage caused by the operations of the franchisee with minimum liability limits of one million dollars (five hundred thousand dollars in the older franchise agreement)for personal injury or death of any one person, one million dollars for personal injury or death of two

or more persons in any one occurrence, and one million dollars (five hundred thousand dollars in the older franchise agreement) for damage to property resulting from any one occurrence.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable providers are required to obtain a permit from the appropriate county office as well before it may access the public rights of way.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: Review the franchisee's performance under the ordinance for renewal or termination. In the event the Franchisee is in default of any of the terms and conditions of the franchise and fails to make substantial efforts to cohere, said default within ninety days after being served in writing by the County with notice of such default, then, and in that event, and after affording the Franchisee a time to be heard, the county will have the right and option to terminate the franchise; provided, however, that no default caused by reasons outside the franchisee's control shall be considered to be a cause for termination. The older franchise agreement provides the County access, upon reasonable notice, to all plans, engineering, accounting, financial, statistical, customer and service records and provides for liquidated damages. The County can request performance evaluation sessions every third year during the term of the franchise and performance test reports required by the FCC. Council also has in place a Citizen Oversight Committee that, among other things, advises the franchisee on service to subscribers, monitor consumer service standards, etc.

The Franchising Process

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows: Any modifications of the FCC rules and regulations or the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection Act of 1992, and the Telecommunications Act of 1996, resulting from amendment thereto, shall be incorporated into the ordinance within one year of adoption of the modification or at the time of the franchise renewal, whichever occurs first.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance, the governing body of Darlington County, the Darlington County Council, grants franchise agreements by ordinance. All ordinances require three readings of County Council and a public hearing. The notice of the public hearing must be published in

the local newspapers at least fifteen days prior to the date of the public hearing. The public hearing and meetings of County Council are open to the public.

Competitive Cable Systems

Our community has not denied any provider the opportunity to serve in our community.

Conclusions

The local cable franchising process functions well in the County of Darlington. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

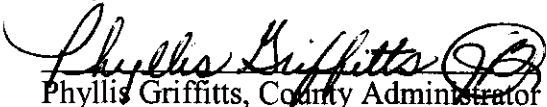
Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The County of Darlington therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,


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